

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRANCE SMITH,

Defendant.

OPINION & ORDER

17-cr-00116-1 (WHW)

Walls, Senior District Judge

Petitioner Terrance Smith, currently serving a 57-month sentence, requests in a *pro se* motion that this Court make a *nunc pro tunc* designation of his time spent at a New Jersey state facility from January 28, 2017 to November 15, 2017 as a “place of confinement towards his federal sentence.” ECF No. 20. The Government responded to Petitioner’s motion contending, in part, that this request is already being handled in the Middle District of Pennsylvania, where Petitioner is serving his sentence and in 2018 filed an “identical request for *nunc pro tunc* credit.” ECF No. 23 at 1.

The record is clear that Petitioner moved for identical *nunc pro tunc* credit in the Middle District of Pennsylvania in 2018 before moving for the same relief with this Court on February 1, 2019. *Compare* ECF No. 23 at Ex. A *with* ECF No. 20. “The first-filed rule provides that, in all cases of concurrent jurisdiction, the court which first has possession of the subject must decide it.” *Samsung Elecs. Co. v. Imperium Holdings (Cayman), Ltd.*, No. 17-3445, 2019 WL 1513504, at *1 (3d Cir. Apr. 8, 2019) (internal quotations omitted). This is due to the principle that a responding party should “be free from the vexation of subsequent litigation over the same subject matter.” *Chavez v. Dole Food Co., Inc.*, 836 F.3d 205, 216 (3d Cir. 2016). “[B]ecause the first-

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filed rule is derived from principles of equity and not of law, courts may choose to not apply the rule when there is evidence of inequitable conduct, bad faith or forum shopping.” *ADP, LLC v. Trohaugh*, No. 16CV08627-WHW, 2017 WL 3174958, at *1 (D.N.J. Feb. 15, 2017). Petitioner Smith put forward no evidence of any foul play that would have the Court ignore the first-filed rule.

There is no reason for this Court to disturb the already ongoing proceedings in Pennsylvania, and so it is hereby **ORDERED** that Petitioner’s motion (ECF No. 20) is denied.

DATE: 30 April 2019

A handwritten signature in black ink, appearing to read 'W. H. Walls', written over a horizontal line.

William H. Walls

Senior United States District Court Judge